



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:

H.B. NO. 2829, RELATING TO POST CONVICTION PROCEEDINGS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 3, 2012

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Diane K. Taira or Richard W. Stacey, Deputy Attorneys General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General is in strong support of this bill.

This bill would limit the time period during which inmates can seek post-conviction relief in the State courts. In addition to a direct appeal to the Intermediate Court of Appeals and the Hawaii Supreme Court, and the filing of a writ of habeas corpus with the United States District Court, individuals convicted of crimes in state courts may also challenge their convictions, sentences, and other matters related to custody by filing petitions for post-conviction relief pursuant to Hawaii Rules of Penal Procedure Rule 40 and chapter 660, Hawaii Revised Statutes, in state courts.

Currently, there is no statute of limitations on petitions for post-conviction relief. Defendants can, and do, file challenges to their convictions and custody long after the actual events at issue, making it difficult to address the merits of the challenges and, if necessary, to hold retrials or new hearings. Establishing a five-year statute of limitations would ensure that challenges to convictions and matters of custody could be reviewed and decided when the record and witnesses are more likely to remain available. In comparison, 28 U.S.C.A. § 2244 provides for a one-year statute of limitations on the filing of a federal writ of habeas corpus by persons in

custody pursuant to judgments of state courts, with numerous tolling periods for various reasons.

The wording of this bill is similar to that federal statute.

The Permanent Committee on the Rules of Penal Procedure has proposed amending Rule 40 of the Hawaii Rules of Penal Procedure to add a statute of limitations as in this bill, but the Hawaii Supreme Court has not adopted the proposal, based in part on the premise that this is a matter for the Legislature.

This bill should have a positive impact on the public as it promotes finality to convictions and sentences in a more reasonable timeframe. It would also prevent the filing of numerous frivolous and repetitive petitions that cause unnecessary expenditure of resources by the Judiciary and State respondents. Further, in the event that reconsideration or retrials are found to be necessary, evidence is more likely to be intact closer to the time of the offense involved.

We respectfully request that the committee pass this bill.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

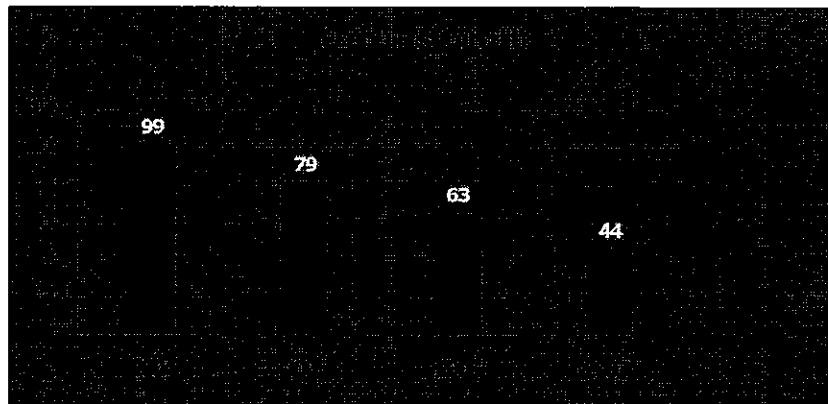
H.B. NO. 2829: RELATING TO POST CONVICTION PROCEEDINGS

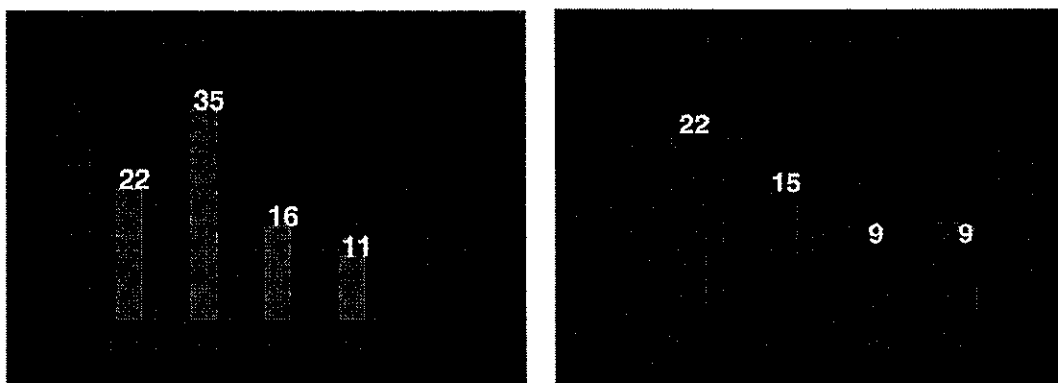
Chair Keith-Agaran and Members of the Committee:

We oppose H.B. No. 2829 which seeks to impose a five-year limitation on the time in which a person who has been convicted of a crime is able to file a petition for post-conviction relief. The bill also severely limits the ability of a convicted person to file second or successive petitions. We believe that such a limitation on the ability to seek relief in the courts for a wrongful conviction is patently unfair and potentially penalizes a petitioner for circumstances which might be beyond his/her control.

The purpose of this bill appears to be to limit the number of post-conviction petitions being filed by prisoners. However, statistics compiled from actual Judiciary files illustrate that such petitions had actually been on the decrease in recent years. [See tables below]

Number of Post-Conviction Petitions Filed





Thus, when you examine the actual caseload statistics, there is no demonstrated need for this legislation since petitions are already on the decline. Indeed, the imposition of a strict time limitation could very well have the opposite effect and increase petition filings since defendants will become concerned about the time lapse even if they are unsure about the grounds for their petitions.

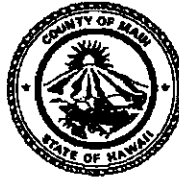
The experience in the federal system portend the predicted increases in post-conviction proceedings if this measure should pass. The language in H.B. No. 2829 is very similar to limitations imposed on federal habeas corpus petitions through the Antiterrorism and Effective Death Penalty Act of 1996. Federal Bureau of Justice Statistics show that, following the passage of that act, between 2004 and 2005, state prisoner petitions filed in federal court increased nearly 5% and federal prisoner petitions filed in federal court increased by more than 15%.

The proposed changes will also increase the workload of the circuit courts and the complexity of post-conviction proceedings. Currently, the circuit court routinely summarily denies a great number of post-conviction petitions as containing no colorable claim. However, the proposed changes contain a number of exceptions to the five-year limitation period. Because of the drastic nature of the five-year limitation and the accompanying ban against successive petitions, the circuit court will inevitably be forced to conduct full hearings and the parties will have to litigate the applicability of the exceptions to the time bar and successive petition bar. These proceedings will invoke the necessity for more court time and potentially lead to more cases on appeal.

In summary, this bill ignores the fact that it is fairly commonplace these days for persons who were convicted by a court of law to be exonerated far more than five years following their convictions. Many have spent decades in state and federal prisons – even on death row. This measure could unfairly deny an innocent person the means to challenge his/her conviction by imposing an arbitrary time limitation on the filing of a habeas corpus petition and an arbitrary prohibition against the filing of a second or successive petition. The bill seeks to do this in the face of statistical evidence demonstrating that the current system is not being abused or is in need of an overhaul.

Thank you for the opportunity to comment on this bill.

ALAN M. ARAKAWA
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TESTIMONY

ON

HB 2829 - RELATING TO POST CONVICTION PROCEEDINGS

February 3, 2012

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
House Committee on Judiciary

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committees on Judiciary:

HB 2829, Relating to Post Conviction Proceedings, proposes to establish a 5-year time limitation on filing habeas corpus petitions, with exceptions, and prohibit successive petitions, with exceptions.

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. A defendant's right to file a habeas corpus case in Hawaii is provided through the State Constitution, Hawaii Revised Statutes Chapter 660 and Hawaii Rules of Penal Procedure (HRPP) Rule 40. We do not dispute this right; but we believe that limitations on time and successive petitions should be imposed in most cases.

We frequently receive HRPP Rule 40 petitions for cases that were completed over seven years prior to the filing of the petition. State law provides that records may be disposed, usually after seven years. This creates a problem, where a defendant complains about his or her case, and the records, both ours and those held by the courts, are no longer in existence. The problem

of the availability of witnesses is also an important issue. Finally, this situation also affects the peace of mind of crime victims.

Currently, federal law provides a one-year limitation for habeas corpus cases in both state and federal criminal cases, with exceptions, and provides a limitation on successive petitions. HB 2829 has basically the same provisions as federal law, with the exception that the time limitation would be five years instead of one year. The Permanent Committee on the Rules of Penal Procedure, consisting of representatives of the Judiciary, the Attorney General, the state Public Defender, the county prosecutors, and private defense counsel, approved an amendment to HRPP Rule 40 to impose a five-year limitation on such filings. However, the Hawaii Supreme Court rejected the rule amendment, holding that such a provision must be provided by the Legislature.

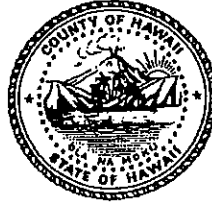
The limitation on successive petitions are necessary, because many defendants who are serving long sentences file numerous petitions. These petitions almost always involve issues that were previously ruled upon, waived, or are frivolous. The amount of time and resources used to address these petitions is an unnecessary burden for the county prosecutors.

We believe that HB 2829 will help ensure that review of convictions and custody issues can be done while files and witnesses are available. It also promotes the finality of judgments and sentences, while allowing defendants a reasonable time to challenge judgments and custody. We ask that the committee PASS HB 2829.

Thank you very much for the opportunity to provide testimony on this bill.

CHARLENE Y. IBOSHI
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TESTIMONY IN SUPPORT OF HOUSE BILL 2829
A BILL FOR AN ACT RELATING TO POST CONVICTION
PROCEEDINGS

Hearing before House Committee on Judiciary
Friday February 3, 2012, 2:00 PM
State Capitol, Conference Room 325

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

Rep. Tom Brower	Rep. Denny Coffman	Rep. Barbara C. Marumoto
Rep. Rida T.R. Cabanilla	Rep. George R. Fontaine	Rep. Angus L.K. McKelvey
Rep. Mele Carroll	Rep. Robert N. Herkes	Rep. Joseph M. Souki
		Rep. Clift Tsuji

TO: Representatives Keith-Agaran, Rhoads and Members of the Committee:

Thank you for the opportunity to comment in support of HB 2829.

This bill is the culmination of nearly a decade's worth of work on the issue of reasonable time limits for post-conviction relief under Rule 40, Hawai'i Rules of Penal Procedures. The Judiciary's Permanent Committee on the Hawai'i Rules of Penal Procedures has reviewed the issue of post-conviction filings' time limits comprehensively and with much debate. The Judiciary's Permanent Committee is comprised of trial judges from all the circuits, the State Public Defender, prosecutors and private defense counsels. Both the Permanent Committee on the Hawai'i Rules of Penal Procedures and the Committee on Circuit Court Criminal Rules have approved the establishment of reasonable time limits.

The current bill, HB 2989, fosters the timely disposition of issues previously known to defendants and allows for some reasonable finality, especially for victims, in the criminal justice system. Defendants' rights are protected: HB 2989 specifically allows for post-conviction complaints without restriction in the event new factual evidence is discovered that could not have been known or discovered previously, or in the event of a previously unavailable new rule of constitutional law under the Constitutions of the United States or the State of Hawai'i.

In 2007 the Hawai'i Supreme Court determined that it is within the constitutional authority of this Legislature (under Article I, Section 15) to enact the proposed amendments to the habeas corpus law, HRS Chapter 660. Thus, only this Legislature can act on this proposal, which will be of great value in the administration of justice.

Thank you for considering our testimony and for your responsiveness in support judicial economy and finality of judgments while protecting the rights of defendants.